

APPEAL NO. 021768
FILED AUGUST 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 18, 2002. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fifth quarter.

The appellant (carrier) appeals, contending that one of the claimant's exhibits should not have been admitted; that the claimant has not proven entitlement on either the good faith or direct result requirements; and that, despite the claimant's employment, he was still required to seek work and document his efforts every week. The file does not contain a response from the claimant.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirements of Section 408.142(a)(4) and Rule 130.102(b)(2), and the direct result requirements of Section 408.142(a)(2) and Rule 130.102(b)(1).

The parties stipulated that the claimant sustained a compensable injury on _____, and that the qualifying period for the fifth quarter was from December 21, 2001, through March 21, 2002. The claimant testified that prior to his injury he had been employed as a heavy equipment operator that required heavy labor. Currently, the claimant has a 15-pound lifting restriction with no repeated bending or stooping. The claimant testified that during the qualifying period, he was employed full time as a truck driver for an oil field pipe transporter. The claimant said this was lighter work than his preinjury job because he did not have to load or unload the pipe.

The claimant presented evidence from his current employer that stated he was employed full time and earned 22% of the gross revenue that his assigned truck generates. There were periods during the qualifying period that the claimant's earnings were reduced because of slow business (not as many truck runs) and because the claimant was unable to work due to an unrelated medical condition.

Concerning the requirement that the claimant have made a good faith effort to obtain employment commensurate with his ability to work, Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. The hearing officer found that the claimant's current employment was full time and

commensurate with his ability to work, and that the claimant's underemployment was due in part "to a work slow down" and the claimant's unrelated medical condition. The Appeals Panel has specifically rejected the argument that a claimant must work in the relatively equal position during each week of the qualifying period in order to satisfy the good faith requirement of Rule 130.102(d)(1). Texas Workers' Compensation Commission Appeal No. 011519, decided August 15, 2001. The hearing officer, in his Statement of the Evidence, explained why he believed the claimant's underemployment was a direct result of his impairment.

The carrier contends that a letter from the claimant's current employer was improperly admitted because it had not been timely exchanged. See Rule 142.13(c). The hearing officer's inquiry supports that the claimant had timely requested the letter, had exercised due diligence in follow-up inquiries, and had timely exchanged it as soon as it was obtained. The hearing officer ruled that there was good cause for the failure of timely exchange. We are satisfied that the hearing officer did not abuse his discretion in admitting this evidence. See Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

Regarding the questions of whether the claimant's employment was commensurate with his ability, and whether the claimant was obligated to look for other employment during times in which the truck hauling was subject to slow down, we are satisfied that those determinations involved factual questions and that the challenged findings are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **HIGHLANDS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES HOOKER
10370 RICHMOND
HOUSTON, TEXAS 77042.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge